

HUMAN SERVICES BOARD

INTRODUCTION

FINDINGS OF FACT

1. The petitioner is an eighty-year-old mentally disabled woman who has appointed her daughter to act for her.
2. In January of 2004, the petitioner liquidated several stocks and an annuity worth approximately \$30,000. She then sent the \$30,000 to the IRS as an "estimated tax payment" for the 2003 tax year.
3. On February 26, 2004, the petitioner applied for Medicaid long term care benefits. PATH questioned the disbursement to the IRS and asked for evidence that the petitioner owed such an amount in tax. PATH was skeptical because the liquidation of the investment account did not

occur until 2004 making any liability on that amount not payable until the 2005 tax year. The petitioner declined to provide that information.

4. When no justification for the tax payment was forthcoming, PATH determined to count the resources sent to the IRS as a transfer for less than market value and denied the petitioner's application. In addition, a penalty period was established of approximately five months from February 1, 2004 through July 19, 2004 during which the petitioner would be ineligible for Medicaid based on the transfer.

5. The petitioner filed a tax return on April 14, 2004, reporting that she had no tax liability for 2003 and requested a refund of her estimated tax payment. During the first week of May 2004, the petitioner received a refund of the entire \$30,000 as the IRS agreed she had no tax liability.

6. It is found based on the above facts that the petitioner's transfer of the bulk of her assets to the IRS in February of 2004 was not due to a debt owed to the IRS but was perpetrated as a mere sham to facilitate her eligibility for Medicaid.

ORDER

The decision of PATH is affirmed.

REASONS

Individuals who apply for long-term care Medicaid eligibility who have more than \$2,000 in resources at the time of application cannot be found eligible for the program. M230, P-2420C(1). Regulations adopted by PATH require that transfers of income or resources made by applicants at or near the time of application be assessed to see whether or not those money transfers were made for "fair market value" or were mere attempts to divest the applicant of assets to obtain Medicaid eligibility. M440. If it is determined that the transfers were made for less than "fair market value", a penalty period is assessed during which time the applicant cannot be found eligible for Medicaid. M440. Money used to pay bona fide debts, such as federal taxes, is not considered a transfer for less than fair market value. M 440.2.

In the case at issue, the petitioner, on the advice of her attorney, sent a large sum of money representing close to the totality of her assets to the IRS shortly before applying for Medicaid. The petitioner styled the sums paid over to IRS as "Estimated Tax Payments" but the petitioner has not submitted any evidence showing that she had a reasonable basis to believe that she actually had a tax liability close to the

amount remitted to the IRS, even though she was asked to do so.¹ The petitioners' resistance to submitting such evidence makes it fair to conclude that she had no reason to believe that she owed these amounts of money to the IRS and that the transfers did not represent debts due. Therefore, PATH was correct to find that these transfers to the IRS were made without fair market value thus creating a burden on the petitioners to show that these transfers were "made exclusively for a purpose other than qualifying for Medicaid." M440.3(d).

The petitioner has made no attempt to show that these transfers were made solely for some legitimate purpose other than qualifying for Medicaid. Rather, she has taken the position that it is not necessary to provide any justification to PATH as to why she believed she would owe such a large sum to the IRS. The petitioner has even gone so far as to argue that this IRS deposit was not really a transfer because the payment was "scheduled to be returned" to her within her

¹ The petitioner has an obligation to provide verification of questionable items needed to make a decision on eligibility under M126. Failure to provide verification can result in an outright denial of the application.

lifetime, in fact, as soon as she filed her tax return. She argues that such a "scheduled return" takes these payments out of the realm of a transfer for less than fair market value under the regulations. M440.21. These two arguments are, however, in serious conflict with each other. If the petitioner believed in good faith that she owed this sum to the IRS, why did she expect that she was "scheduled" to receive the money back? The facts show that this "Estimated Tax Payments" was never intended to pay actual taxes owed and is nothing more than a legal fiction created to temporarily take money out of the hands of the petitioner in order to allow her to qualify immediately for Medicaid.

Given the facts and regulations cited above, PATH was correct in determining that the petitioner transferred her assets for less than fair market value shortly before her Medicaid application because she presented no evidence that she owed such a debt to the IRS. In addition PATH was correct in finding that the money was not "scheduled to be returned" at the time of the application because the IRS could not know if it would return the money until the petitioner had filed a tax return which was not prepared until some time after the application for eligibility was filed. PATH was thus correct to determine that a penalty should be imposed upon the

petitioner preventing her from reapplying for benefits until the passage of five months.² The petitioner can presumably pay for her long-term care for those disqualified months from the "tax return" she received from the IRS.

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² The petitioner does not argue that the penalty period is incorrect assuming that the amounts paid to the IRS are considered a disqualifying transfer.